PARKER McCAY

Parker McCay P.A.
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900
F: 856.596.9631
www.parkermccay.com

Summary of Grow NJ and ERGG Programs Contained in the New Jersey Economic Development Opportunity Act of 2013 Benefits for Penns Grove

Background

The New Jersey Economic Development Opportunity Act of 2013 ("Law") was enacted on September 18, 2013. This transformative Law phases out several existing incentive programs administered by the New Jersey Economic Development Authority ("NJEDA"), while significantly expanding the current Grow New Jersey Assistance ("GrowNJ") and Economic Redevelopment and Growth Grant ("ERGG") programs.

In short, the GrowNJ program is broadly aimed at industrial, commercial and office projects, and excludes retail facilities. The prior GrowNJ Program had provided tax incentives to businesses that invest a minimum of $20,000,000 and create or retain 100 full-time jobs in a limited number of areas. The value of the tax credits was limited to $5,000 per employee with bonuses that would allow the credit to reach $8,000 per employee. Tax credits were available for a period of 10 years.

ERGG grants, on the other hand, have generally been used by retail and other developers who are not eligible for GrowNJ financing. The ERGG program provides grants to reimburse developers for all or a portion of the project costs that remain to be financed after all other sources of capital have been accounted for ("Project Financing Gap"). A developer files an application with NJEDA which must find that the revenue to be generated to the State by the project will exceed the amount necessary to reimburse the developer for the Project Financing Gap. Payments are made to the developer from revenue received by the State over 20 years. A grant can be pledged or assigned as security for private financing.

What follows is an outline of the legislative changes to the GrowNJ and ERGG programs described above and how they could benefit projects in Penns Grove.

GrowNJ Program

The Law makes significant amendments to the GrowNJ program. Generally, the Law expands the areas in which a business can locate, reduces the minimum investment required by a business, and reduces the number of jobs required to be created/retained.

Key aspects of the Law are as follows:

- Non-profit corporations are entitled to apply for tax credits.

- The Law expands the areas in which an eligible facility can be located to include:

  1. Port districts (within a 15 mile radius of each marine terminal facility established by the South Jersey Port Corporation Law),
  2. Distressed municipalities (Penns Grove is a distressed municipality under the Law),
  3. Urban transit hubs,
  4. Planning Areas 3 & 4A, designated centers, and
  5. Redevelopment areas or existing structures in Planning Areas 4B or 5.

  - Retail facilities in do not qualify for incentives under the GrowNJ program.

- The Law eliminates the prior $20,000,000 minimum investment and replaces it with a minimum investment based on the cost per square foot. The minimum capital investment per square foot in Penns Grove is:

o Rehabilitation of an industrial facility	$13.00/sq. ft.
o Construction of a new industrial facility	$40.00/sq. ft.
o Rehabilitation of a non-industrial facility	$26.00/sq. ft.
o Construction of a new non-industrial facility	$80.00/sq. ft.

- The Law eliminates the prior minimum of 100 jobs and replaces it with a sliding scale based on the type of business. The minimum number of jobs required in Penns Grove is as follows:

Business Type	New Jobs	Retained Jobs
Start-up Technology, or Manufacturing	7	18
Targeted Industries - Transportation, Defense, Energy, Logistics, Life Sciences, Health, Finance (excluding warehouse and distribution)	18	26
Other Businesses	26	37

- The Law establishes a "mega project" which includes a qualified business facility in a port district housing certain businesses that either: (a) has a capital investment in excess of $20,000,000 and at which more than 250 jobs are created/retained, or (b) is a facility at which more than 1,000 full-time jobs are created or retained.

- The Law provides tax credits for each new or retained job, ranging from $500 per job per year in Planning Areas 3, 4 and 5 to $4,000 per job per year for a project in a distressed municipality and $5,000 per job for a mega project.

- The base annual tax credit in Penns Grove is $4,000 per job as a distressed municipality.

- In addition to base credits described above, the Law provides bonus credits ranging from $250 to $3,000 per job per year depending upon a variety of factors, including, but not limited to, projects located in certain South Jersey municipalities, including Penns Grove, incubator facilities, transit-oriented developments, mega projects, environmental and sustainable buildings, and businesses creating more than 250 jobs.
    - Penns Grove qualifies for a $1,000 per job bonus as a municipality with an MRI of greater than 465.
    - Other bonus credits per job may be available depending on the specific project, including $1,500 per job for Marine Terminal Projects.

- Once you determine the base credit and bonus credits available, you add them to get the Gross Tax Credit per job, and multiply the Gross Tax Credit by the number of jobs to identify the tax credit available per year for 10 years, subject to the new job/retained job information below.

- The total tax credit for each new full-time job is 100% of the gross tax credits. The total tax credit for each retained job is 50% of the gross tax credit. However, if the facility will replace a facility substantially destroyed by a federally declared disaster, the credit for both new and retained jobs is 100% of the gross credit.

- The Law provides a cap on the annual amount of tax credit per job of $11,000 in Penns Grove.

- The Law provides a cap on the annual amount of tax credits available to a business of $8,000,000 in Penns Grove.

- The capital investment must yield a net positive benefit to the State equal to at least 110% of the requested tax credit amount, taking into account the benefits generated during 20 years following completion of a project.

- The CEO of a business applying for tax credits must certify that: the jobs are at risk of leaving the state or of being eliminated; and the new jobs would not be created, or the existing jobs would not be retained, but for the tax credits provided under the program.

ERGG Program

The Law has expanded the ERGG program significantly, allocating tax credits for certain residential projects in Penns Grove and increasing the size of incentive grants in certain project locations.

Key aspects of the Law are as follows:

<u>Qualified Residential Projects</u>

The Law provides tax credit funding for "qualified residential projects," which include multi-family residential units for purchase or lease, or dormitory units for purchase or lease.

- $75,000,000 in tax credits have been allocated for qualified residential projects located in certain South Jersey municipalities, including Penns Grove.

- Tax credits are available for qualified residential projects with a minimum project cost of $10,000,000, if the anticipated tax revenue from the project is insufficient to cover the Project Financing Gap.

- The maximum value of the tax credits is 30% of the project costs, not to exceed $40,000,000 for any individual qualified residential project.

- Applications for a qualified residential project must be filed by July 1, 2015, and the developer must obtain a temporary certificate of occupancy for the project no later than July 28, 2015. Note that it is anticipated that this date will be extended to 2019.

<u>Retail/Commercial Projects</u>

The Law significantly expands the incentive areas eligible for a grant under the ERGG program to include Penns Grove.

- The ERGG program requires developers to provide at least 20% of the total project cost.

- In South Jersey, an incentive grant of up to 30% of the total project costs may be awarded for a term of up to 20 years.

- The Law provides that up to an average of 75% of the projected annual incremental revenues may be pledged towards the State portion of an incentive grant.

- Incentive grant payments to a developer will begin upon evidence of project completion.

- In general, the net benefit to the State or the municipality must exceed the amount necessary to reimburse the developer for its Project Financing Gap; however, for a project that may be designated a disaster recovery project, all tax revenue generated by the project is treated as new tax revenue, even if revenue was generated by the site prior to the disaster.

Utilization/Sale/Monetization of Tax Credits

- Tax credits may be provided for a project under the GrowNJ program or a qualified residential project under the ERGG program. Under current NJEDA regulations related to the GrowNJ program, upon the award of tax credits, the business may: (1) use of the credit directly to offset any tax liability for New Jersey Corporation Business Taxes or Insurance Premium Taxes owed to the State of New Jersey; (2) sell the Credit on an annual basis to one or more entities that owe New Jersey Corporate Business Taxes or Insurance Premium Taxes; or (3) monetize the credits by selling several years of tax credits to entities that anticipate owing New Jersey Corporate Business Taxes or Insurance Premium Taxes.

- The NJEDA regulations for the GrowNJ program provide that tax credits cannot be sold for less than 75% of the value of the credit transferred. The Law applies this requirement to the tax credits awarded under the ERGG program.

- Current regulations for the GrowNJ program state that the total amount of tax credits transferred in a single tax period shall be at least $1,000,000.

- Upon the transfer of credits, the NJEDA will issue a tax credit transfer certificate.

- The sale of tax credits are subject to market supply and demand. Based on discussions with the NJEDA and contact with various taxpayers and entities who are engaged in the application process for the use of tax credits in 2012, the market for the transfer of the tax credits on an annual basis is approximately 85% to 95% of the value of the credit transferred. The law permits the purchaser of a tax credit certificate to transfer it to others in the same manner as the original holder. In many cases, brokers are also becoming participants in the process, attempting to purchase credits and find buyers; they appear to be receiving between 1 and 5 cents per dollar in for their services.

Miscellaneous Provisions Related to GrowNJ and ERGG programs

- Applications for incentives under the GrowNJ and ERGG programs must be submitted by July 1, 2019.

- All construction contracts for projects that receive incentives through the GrowNJ or ERGG programs under the Law must comply with New Jersey's prevailing wage law.

Conclusion

As noted above, eligibility and program benefits under the proposed GrowNJ and ERGG Law is very complex and extremely fact sensitive. Accordingly, this memorandum is intended to be a high level summary of the Law as it pertains to Penns Grove and is not intended to be an exhaustive analysis of a specific project.

Additional Information

For additional information about the application of the Economic Opportunity Act of 2013 to your project, please contact Kevin D. Sheehan, Esquire (856-985-4020 or ksheehan@parkermccay.com) at Parker McCay P.A.